

RONALD LAWRENCE MORTENSEN,)
)
 Petitioner,) 2:11-CV-00266-KJD-CWH
)
 vs.)
)
 DWIGHT D. NEVEN, *et al.*,) **ORDER**
)
 Respondents.)
)
 /

Ground 1-1, subparts (B) and (C) as set forth in the Court’s order at page 6, and identified on page 24 of the First Amended Petition (Amd. Petn.) as Ground 1, (pretrial level) subparts (B) and (C) are unexhausted. Petitioner did not properly present his claim that trial counsel failed to obtain copies of video tapes from the T-Bird Lounge, the ATM, and other locations and did not interview witnesses to “establish whether Brady was wearing his glasses on the night in question....” Amd. Petn., p. 24, ll. 19-23. Neither did petitioner fairly present a challenge to “pretrial identification of Mortensen as being so impermissibly suggestive....” Amd. Petn., pp. 24-25, ll. 24-18.

1 Ground 1-1 subpart (F)(3) claiming that counsel failed to file a motion to “sequester the jury...”
2 is also unexhausted. See Amd. Petn. pp. 30-31, ll. 22-7.

3 Ground 1-2 (counsel during trial) subparts (L)(1)-(4) as outlined in the Court order at page 8,
4 (“Counsel failed to offer jury instructions regarding [1] mere presence, [2] regarding eyewitness
5 identifications, [3] regarding the credibility of drug users or addicts, [4] regarding intoxication to negate
6 elements of a crime...”)) and found in the Amd. Petn. on pages 42-44, (counsel’s performance during
7 trial) are unexhausted. Subpart 5 referenced in the Court’s Order, claiming that counsel did not offer
8 jury instructions on the definition of premeditate and deliberate, is exhausted.¹

9 **IT IS THEREFORE ORDERED** that petitioner’s Motion for Clarification (ECF No. 58) is
10 **GRANTED**, and the Order entered January 28, 2013 (ECF No. 57), is clarified as outlined above.

11 **IT IS FURTHER ORDERED** that petitioner’s response to the January 28, 2013, Order shall
12 be filed within thirty days of entry of this Order.

13 DATED: February 8, 2013



14 UNITED STATES DISTRICT JUDGE
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25 ¹ This subpart (L)(5) is the same as petitioner’s ground 1-2 (counsel during trial), subpart L(2) found on
26 page 43 of the Amd. Petn.